

Port Performance Freight Statistics Working Group Charter

1. Committee's Official Designation (Title): This committee shall be known as the Port Performance Freight Statistics Working Group (hereafter "the Working Group").
2. Authority: Section 6018 of the *Fixing America's Surface Transportation (FAST) Act* (P.L. 114-94; 129 Stat. 1312) requires the Director, Bureau of Transportation Statistics (BTS) to establish a "Working Group" that will make recommendations concerning port performance measures. The Working Group will operate under the provisions of the *Federal Advisory Committee Act (FACA)* (P.L. 92-463, as amended, 5 U.S.C. App. 2).
3. Objectives and Scope of Activities: The Working Group, pursuant to 49 U.S.C. 6314(c), shall provide the BTS Director with recommendations for the following:
 - (a) nationally consistent port performance measures, including specifications and data measurements to be used in the Port Performance Freight Statistics Program; and
 - (b) an efficient process for the U.S. Department of Transportation (DOT) to collect timely and consistent data, including identifying safeguards to protect certain proprietary information.
4. Description of Duties: The Working Group shall provide the BTS Director with independent advice and recommendations on matters, as specifically outlined in Section 6018 of P.L. 114-94:
 - (a) Identify a generally accepted industry standard for port data collection and reporting.
 - (b) Specify standards for collecting data and reporting port performance measures.
 - (c) Make recommendation for statistics on U.S. port capacity and throughput.
 - (d) Develop a process for DOT to collect timely and consistent data, including identifying safeguards to protect certain proprietary information.No later than December 4, 2016, the Working Group shall submit a written report containing its recommendations to the BTS Director on port performance measures, including specifications and data measurements to be used in the Port Performance Freight Statistics Program.
5. Agency or Official to Whom the Committee Reports: The Working Group reports to the BTS Director.
6. Support: BTS shall provide meeting support as deemed necessary for the Working Group's performance. In addition, BTS shall ensure compliance with the requirements of FACA, the *Government in the Sunshine Act* (5 U.S.C. § 552b), and other applicable Federal statutes and regulations.
7. Estimated Annual Operating Costs and Staff Years: The estimated annual operating costs are approximately \$50,000 and 0.9 full-time equivalents.
8. Designated Federal Officer (DFO): The Working Group's DFO shall be a full-time or permanent part-time DOT employee and appointed in accordance with established DOT policies and procedures. The Working Group's DFO shall be in attendance at all meetings of the Working Group and any subcommittees for the entire duration of each

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and every meeting. However, in the absence of the Working Group's DFO, a properly appointed Alternate DFO shall attend the entire duration of meetings of the Working Group and its subcommittees.

All meetings will be open to the public, except as provided under section 10(d) of FACA, as implemented by 41 CFR § 101-6.10, the *Government in the Sunshine Act*, 41 CFR Part 102-3, and DOT Order 1120.3B. Only the DFO in consultation with the BTS Director or BTS Confidentiality Officer may close a meeting in accordance with P.L. 114-94 and the *Confidential Information Protection and Statistical Efficiency Act* (44 U.S.C. 3501 note; P.L. 107-347) and other applicable laws. The BTS Confidentiality Officer has a duty to ensure the confidentiality protections of the data sources and information collected by BTS for statistical purposes. All data releases under Section 6018 will be coordinated with the BTS Confidentiality Officer prior to any public access.

The DFO or Alternate DFO in consultation with the BTS Director shall call all Working Group and any subcommittee meetings; prepare and approve all meeting agendas; adjourn any meeting when the DFO, or the Alternate DFO, determines adjournment to be in the public interest or required by governing regulations or DOT policies and procedures; and chair meetings when directed to do so by the BTS Director.

9. Estimated Number and Frequency of Meetings: The Working Group shall meet at the call of the Working Group's DFO or Alternate DFO, in consultation with the BTS Director. The estimated number of meetings by the Working Group is at least twice per year. A notice of each meeting shall be published in the *Federal Register*, at least 15 calendar days before the meeting.
10. Duration: 41 CFR § 102-3.55 provides that the Working Group's charter shall terminate two years after the filing date; however, the charter is subject renewal every 2 years.
11. Termination: This charter shall terminate 2 years from its filing date unless renewed in accordance with FACA.
12. Membership and Designation: The Working Group shall be comprised of representatives appointed by the BTS Director on behalf of the Secretary of Transportation. The Working Group shall include representatives, in accordance with 49 U.S.C. 6314(c), from the following Federal agencies, organizations, and industries:
 - a) operating administrations of DOT;
 - b) U.S. Coast Guard;
 - c) the Federal Maritime Commission;
 - d) U.S. Customs and Border Protection;
 - e) the Marine Transportation System National Advisory Council;
 - f) the Army Corps of Engineers;
 - g) the Saint Lawrence Seaway Development Corporation;
 - h) the Bureau of Labor Statistics;
 - i) the Maritime Advisory Committee for Occupational Safety and Health;

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- j) the Advisory Committee on Supply Chain Competitiveness;
- k) 1 representative from the rail industry;
- l) 1 representative from the trucking industry;
- m) 1 representative from the maritime shipping industry;
- n) 1 representative from a labor organization for each of the following industries: rail, trucking, and maritime shipping;
- o) 1 representative from the International Longshoremen's Association;
- p) 1 representative from the International Longshore and Warehouse Union;
- q) 1 representative from a port authority;
- r) 1 representative from a terminal operator;
- s) representatives of the National Freight Advisory Committee of the Department; and
- t) representatives of the Transportation Research Board of the National Academies of Sciences, Engineering, and Medicine.

Based upon the meeting agenda, the Federal agencies listed above may provide full-time or permanent part-time Federal officers or employees to serve as their designee(s). Further, the BTS Director may identify *ex officio* representatives from other Federal agencies, with subject matter expertise, to assist the Working Group on an *ad-hoc* basis as advisers. However, these experts have no voting rights on the Working Group and are prohibited from engaging in any deliberations by representatives of the Working Group.

The Working Group's representatives may serve for the duration of the Working Group and must be reappointed annually. Representatives on the Working Group, who are not full-time or permanent part-time Federal officers or employees, shall be appointed to serve as experts or consultants under the authority of 5 U.S.C. § 3109 and to serve as a Special Government Employee (SGE) member if they are being appointed solely for their expertise. Each representative is appointed to provide advice on behalf of the entity that he or she represents, on the basis of his or her best judgment without representing any particular point of view, and in a manner that is free from conflict of interest. Working Group members shall serve without compensation.

All meetings are open to the public, unless the DFO or Alternate DFO closes the meeting in accordance with 41 C.F.R. 102-3.155. Members of the public are invited to appear before or submit statements to the Working Group.

The DFO or Alternate DFO in consultation with the BTS Director or BTS Confidentiality Officer may also close meetings in accordance with 49 U.S.C. 6314(d) and *Confidential Information Protection and Statistical Efficiency Act* (44 U.S.C. 3501 note; P.L. 107-347) to ensure the confidentiality protection of the data sources and information collected by BTS for statistical purposes. All representatives will be required to sign a non-disclosure agreement to ensure the confidentiality of all protected data.

13. Subcommittees: BTS may authorize the Working Group, in accordance with its objective, scope, and duties as well as any applicable DOT policies and procedures, to establish a subcommittee(s). Based upon a written determination, including terms of reference, the

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BTS Director on behalf of the Secretary of Transportation may establish a subcommittee(s) to support the Working Group.

Such subcommittees shall not work independently of the Working Group and shall report all of their recommendations and advice solely to the Working Group for full deliberation and discussion. Subcommittees have no authority to make decisions and recommendations, verbally or in writing, on behalf of the Working Group; nor can any subcommittees or its members update or report directly to DOT or any Federal officer or employee.

All subcommittee members shall be appointed in the same manner as the Working Group representatives; that is, the BTS Director on behalf of the Secretary of Transportation shall appoint subcommittee members even if the member(s) in question is/are already a member(s) of the Working Group. Subcommittee members, with the approval of the BTS Director, may serve a term of service for the life of the Working Group with annual renewals.

14. Recordkeeping: The records of the Working Group and its subcommittees shall be handled according to General Records Schedule 6.2 and appropriate DOT policies and procedures. These records shall be available for public inspection and copying, subject to the Freedom of Information Act of 1966 (5 U.S.C. § 552).
15. Filing Date: The filing date of this charter is March 24, 2016. The Working Group will remain in existence for 2 years after this date unless sooner terminated or renewed.